

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



July 20, 2004

Agenda ID 3739
Quasi-Legislative

TO: PARTIES OF RECORD IN RULEMAKING 03-02-035

This is the draft decision of Administrative Law Judge (ALJ) Econome. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:hl2

Attachment

Decision **DRAFT DECISION OF ALJ ECONOME** (Mailed 7/20/2004)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**Rulemaking for the Purpose of Amending
General Order 156.Rulemaking 03-02-035
(Filed February 27, 2003)**OPINION GRANTING INTERVENOR COMPENSATION
TO THE GREENLINING INSTITUTE FOR SUBSTANTIAL CONTRIBUTION
TO PETITION 02-10-035 AND DECISION 03-11-024**

This decision awards the Greenlining Institute (Greenlining) \$31,450.44 in compensation for its substantial contribution to Petition (P.) 02-10-035 and to Decision (D.) 03-11-024 in the above rulemaking. This decision makes reductions to Greenlining's requested amount of \$57,339.19 because (a) some hours claimed were for work performed (or that Greenlining expects to perform) outside of the proceeding; (b) several of Greenlining's requested hourly rates exceed the market rate for the work of persons of comparable training and experience; (c) Greenlining fails to adequately support its requested multiplier; and (d) Greenlining fails to discount its requested compensation for travel time consistent with past Commission decisions.

Background

Starting in 1986, the California Legislature enacted a series of statutes to ensure that a fair proportion of total utility contracts and subcontracts for products and services are awarded to women, minority, and disabled veteran

business enterprises (WMDVBE). (See generally Pub. Util. Code §§ 8281-8286.)¹ The purpose of these statutes is to (a) encourage greater economic opportunity for WMDVBEs; (b) promote competition among suppliers to regulated public utilities to enhance economic efficiency; and (c) clarify and expand the program for the utilities' procurement of products and services from WMDVBEs (See § 8281 (b)(2).)

In April 1988, the Commission adopted General Order (GO) 156 in order to implement §§ 8281 et seq. (See D.88-04-057, 28 CPUC2d 36.) GO 156, § 8.2 requires utilities to establish minimum long-term goals for each major category of products and services a utility purchases from outside vendors. The goals must be not less than 15% for minority-owned business enterprises and not less than 5% for women-owned business enterprises. The goal for disabled veteran business enterprises is 1.5%, effective January 1, 1997.

Prior to this rulemaking, Section 8.5 of GO 156 provided that a utility can create an "excluded category" of products or services where it was clearly evident that WMDVBEs do not provide such services or that sole source procurement is the only available procurement method. The utility had the burden of demonstrating the unavailability of WMDVBEs that could supply such products and services and of justifying in its annual report the continued existence of any excluded category.

¹ All statutory references are to the Public Utilities Code unless otherwise noted.

On October 28, 2002, Greenlining and Latino Issues Forum² filed a petition for rulemaking pursuant to Pub. Util. Code § 1708.5³ to amend GO 156.

Petitioners requested that the Commission institute a rulemaking in order to eliminate the exclusions from the base of procurement dollars the utilities use to establish the monetary value of the WMDVBE procurement goals. Petitioners also requested that the Commission (a) conduct a study showing how much in dollars, as well as in percent of dollars, each major utility has excluded each year since the initiation of GO 156; (b) conduct an audit to ensure that each utility's WMDVBE verification and reporting process is accurate and reliable; and (c) require the utilities to standardize their WMDVBE reporting and verification. The petition did not include specific suggested amendments to GO 156 in order to implement the requested changes.

The Commission did not hold a prehearing conference before issuing a decision responding to the petition. On February 27, 2003, the Commission issued Rulemaking (R.) 03-02-035, which granted the petition in part. Specifically, the rulemaking would determine whether to amend GO 156 to eliminate the exclusions currently permitted, and whether to refine certain aspects of GO 156 verification and reporting. The rulemaking also required the utilities subject to GO 156 to file a report with the Commission summarizing

² Although Latino Issues Forum joined with Greenlining on the petition and in some of the filings in the rulemaking, the intervenor compensation request is made solely by Greenlining. We therefore only address Greenlining's work in this decision.

³ Section 1708.5 authorizes "interested persons to petition the commission to adopt, amend, or repeal a regulation." The Commission is then to consider the petition and, within six months, either deny the petition or institute a proceeding to adopt, repeal, or amend the regulation.

their historic use of exclusions in their WMDVBE reporting, and to provide the Commission with certain data regarding vendors the utilities had contracted with in 2002.

The Commission held a prehearing conference in R.03-02-035 on June 25, 2003, and determined that the proceeding could be resolved by notice and comment, without the need for a hearing. (See August 25, 2003 Scoping Memo.) Greenlining's representatives attended the prehearing conference. Greenlining did not file a notice of intent (NOI) to claim compensation with respect to the petition or rulemaking.

The Commission issued D.03-11-024 on November 13, 2003. Greenlining timely filed its request for an award of compensation for its work in the petition and rulemaking within 60 days of the issuance of D.03-11-024. Pacific Bell Telephone Company, SBC California (SBC) and Verizon California, Inc. (Verizon) oppose portions of Greenlining's request.

Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)

2. The intervenor must satisfy certain procedural requirements including the filing of a sufficient NOI to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
3. The intervenor must file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1802(h), 1803(a).)
6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items 1-4 above are combined, with Item 2 addressed first. A separate discussion on Items 5-6 follows.

Procedural Issues

NOI

Section 1804(a) requires that a customer who intends to seek intervenor compensation shall file a NOI to claim compensation within 30 days after the prehearing conference is held, or, when a prehearing conference is not held, according to the procedure specified by the Commission.

In this matter, no prehearing conference was held before the Commission acted upon Greenlining’s petition by issuing the rulemaking. The Commission

held a prehearing conference in the rulemaking on June 23, 2003. Greenlining did not file a NOI in either the petition or the rulemaking.

Generally, the failure of an intervenor to file an NOI would be fatal to its claim for intervenor compensation. Although we occasionally excused lateness or even omission of an NOI filing, we have also placed great importance on the NOI as a tool to ensure intervenor accountability. (See D.98-04-059, 79 CPUC2d 628.) Since the issuance of D.98-04-059, we have held intervenor to the statutory NOI filing standard unless exceptional circumstances are present and have denied compensation if the intervenor fails to comply with the statute.

In this case, however, Greenlining filed the petition requesting the Commission to amend a regulation by instituting a rulemaking. If Greenlining had not filed the petition, there would not have been the rulemaking. Because § 1708.5 is a relatively new statute, taking effect on January 1, 2000, intervenors have not had much experience in determining the appropriate time to file an NOI in § 1708.5 proceedings. Therefore, solely for this proceeding, we determine that Greenlining's petition filed pursuant to § 1708.5 serves in substance as its NOI with respect to P.02-10-035 and R.03-02-035. This holding is limited to this case only and shall not serve as precedent for future intervenors filing a §1708.5 petition.

In the future, when the Commission acts on a § 1708.5 petition, we will provide direction to potential claimants regarding the timeframe for filing NOIs. However, in the absence of any direction, if a rulemaking issues in response to a petition, and a prehearing conference is then held, potential intervenors must file the NOIs no later than 30 days after the prehearing conference. (See § 1804(a).)

Significant Financial Hardship

An intervenor seeking compensation must show that, without undue hardship, it cannot pay the reasonable costs of effective participation in the proceeding. A participant representing consumers (Category 1) or a representative authorized by a customer (Category 2) must disclose their finances to the Commission, under appropriate protective order to make this showing. In the case of groups or organizations (Category 3), significant financial hardship is demonstrated by showing that the economic interest of individual members is small compared to the overall costs of effective participation. (Pub. Util. Code § 1802(g).)

Section 1804(b) states that a finding of significant financial hardship shall create a rebuttable presumption of eligibility for compensation in other Commission proceedings commencing within one year of the date of that finding. This proceeding commenced on February 27, 2003 and Greenlining's petition was filed in October 2002. In D.02-02-024, 2002 Cal. PUC LEXIS 25 *7, we found Greenlining had made a showing of significant financial hardship under § 1802(g). Because that decision was issued within a year of the commencement of the instant rulemaking, this finding of significant financial hardship creates a rebuttable presumption of eligibility for compensation in this proceeding. No party has rebutted this presumption, so we find that the finding of significant financial hardship continues to exist for this proceeding.⁴

⁴ At least the past two years of Commission decisions addressing Greenlining's showing of significant financial hardship have permitted Greenlining to establish a rebuttable presumption by referring to a prior decision where the financial eligibility finding also relies on a rebuttable presumption, etc. Because we have done so in the past, we follow this approach in this decision. However, in the future, if Greenlining

Footnote continued on next page

Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the Administrative Law Judge (ALJ) or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See §1802(h).) Second, did the customer's participation materially supplement, complement, or contribute to the presentation of another party or to the development of a fuller record that assisted the Commission in making its decision? (See §§1802(h) and 1802.5.) As described in §1802(h), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.⁵

Even where the Commission does not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the

seeks to establish a rebuttable presumption of a significant financial hardship by referring to a finding of significant financial hardship made within the past year (see § 1804 (b)), the earlier finding must be based on actual financial information and not on a rebuttable presumption. In this way, intervenors' financial information will be updated with the Commission annually.

⁵ D.98-04-059, 79 CPUC2d, 628 at 653.

decision or order.⁶ For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions Greenlining made to the proceeding.

Here, Greenlining states that this rulemaking was the result of the petition which Greenlining filed in October, 2002. Among several proposals in its petition, Greenlining proposed to eliminate the exclusions permitted by § 8.5 of GO 156. The rulemaking put this proposal out for comment, and D.03-11-024 adopted this proposal. Greenlining states it also proposed that the Commission standardize GO 156 reporting and verification. D.03-11-024 directed that, after the conclusion of the rulemaking, the Commission hold a workshop to more fully address this issue. Greenlining participated in all aspects of this rulemaking, i.e., filing comments, attending the prehearing conference, etc.

The Commission has awarded full compensation even where the intervenor's positions were not adopted in full, especially in proceedings with a broad scope. (*See* D.98-04-028, 70 CPUC2d 570, 573-574.) Here, Greenlining achieved a high level of success on the issues it raised. Most of the other issues raised by Greenlining were alternative proposals to those adopted by the Commission. In areas where we did not adopt Greenlining's position in whole or in part, we benefited from Greenlining's analysis and discussion of all of the

⁶ See D.03-12-019, discussing D.89-03-063 (31 CPUC2d 402) (awarding San Luis Obispo Mothers for Peace and Rochelle Becker compensation in the Diablo Canyon Rate Case because their arguments, although ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

issues it raised. We find that Greenlining made a substantial contribution as described above.

After we have determined the scope of a customer's substantial contribution, we then look at whether the compensation requested is reasonable.

Reasonableness of Requested Compensation

Greenlining requests \$57,339.19 for its participation in this proceeding, as follows:

Attorney/Expert	Year	Rate	Hours	Without Multiplier	With Multiplier
Robert Gnaizda	2003	\$450	28.2	\$12,690.00	\$19,035.00
John C. Gamboa	2003	\$350	2.0	700.00	1,050.00
Gelly Borromeo	2003	\$300	10.0	3,000.00	4,500.00
Itzel Berrío	2002	\$265	12.7	3,365.50	5,048.25
Itzel Berrío	2003	\$290	62.4	18,096.00	27,144.00
Noelle Abastillas	2003	\$ 90	2.25	202.50	202.50 ⁷
Total Fees				\$38,054.00	\$56,979.75
Postage				\$359.44	\$359.44 ⁸
Total Fees and Costs				\$38,413.44	\$57,339.19

The components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

To assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to

⁷ Greenlining does not add a multiplier to this fee request.

⁸ Greenlining does not add a multiplier to the postage costs.

ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

Greenlining states that its participation was productive, and is significantly less than its estimated \$2 billion of additional contracts to diverse suppliers over five years, or more than \$400 million annually. The record does not support a specific dollar benefit as a result of the changes to GO 156 adopted by this rulemaking. However, Greenlining's efforts contributed substantially to the Commission's rulemaking amending GO 156 to eliminate exclusions, and this amendment should encourage the utilities to make additional contracts with diverse suppliers and stimulate competition for those contracts. This benefit, although hard to quantify, is substantial. Thus, we find that Greenlining's efforts have been productive.

Because not all of a customer's efforts in a proceeding result in substantial contributions to Commission decisions, we must also assess whether the hours claimed are reasonable. Greenlining believes that the total number of hours claimed is reasonable given the scope and complexity of this proceeding. We agree, with three exceptions.

The first exception concerns hours spent on a full panel hearing held before the Commission on July 22, 2003 on diversity issues. The hearing was held outside of this proceeding and focused on two areas: the utilities' purchase of goods and services from minority, women, and disabled veteran owned business enterprises and diversity within the utilities' workforce. Greenlining claims compensation for all hours spent preparing for and attending this hearing; Greenlining does not note that the hearing was not a part of R.03-02-035 or

specific to GO 156 but, rather, part of a broader Commission effort to seek comment on diversity issues.

Normally, we would not grant intervenors compensation for the work performed at the full panel hearing because the hearing was not part of the proceeding to which intervenors claim they made a substantial contribution. However, the full panel hearing was convened largely as a result of Greenlining's efforts and was held contemporaneously with the rulemaking. The issue of eliminating GO 156 exclusions was addressed by Greenlining in the full panel hearing. Because of these unique circumstances, we will award Greenlining compensation for 50% of the time spent on the full panel hearing because our review of the transcript of the full panel hearing demonstrates that, at most, Greenlining directed 50% of its presentation to the issues raised in the instant proceeding.⁹

The second exception concerns time spent by Greenlining after this proceeding was closed. Because this work occurred after the issuance of the final decision in the rulemaking, and is unrelated to the workshops directed by D.03-11-024, it did not substantially contribute to this proceeding. We therefore reduce Greenlining's hours accordingly.¹⁰ The third exception concerns an hour claimed for travel which we reduce by 50% because hours associated with travel are compensated at half of the usual hourly rate.¹¹

⁹ On this point, we reduce Greenlining's 2003 hours by the following amounts: Gnaizda (3.3 hours) and Berrío (4.8 hours).

¹⁰ On this point, we reduce Greenlining's 2003 hours by the following amount: Gnaizda (4.7 hours); Berrío (1 hour); and Abastillas (.75 hours).

¹¹ This point affects Gnaizda's time.

Finally, in determining compensation under the statute, we take into consideration the market rates for similar services from comparably qualified persons. Greenlining's requested hourly rates for Gnaizda and for its paralegal Abastillas meet this standard; several of its other requested rates do not.

Greenlining seeks an hourly rate of \$450 for work performed by attorney Robert Gnaizda in this proceeding in 2003. The Commission previously approved a rate of \$435 for work performed in 2002 in D.03-10-062. Based on additional experience and inflation, a rate of \$450 per hour for Gnaizda's work in 2003 (a 3.4% increase) is reasonable in comparison to the market rates for similar services from comparably qualified persons.

Greenlining seeks an hourly rate of \$350 for work performed by expert John Gamboa in this proceeding in 2003. The Commission in D.03-10-062 approved a rate of \$310 for his work performed in 2001. Greenlining does not offer any comparison to compensation paid to others providing services similar to those provided by Gamboa in this proceeding, so assessing the reasonableness of the requested increase for work in 2003 from the authorized 2001 rate is difficult. In the absence of such information, we utilize an annual escalation rate of 3.4% (the same escalation rate used for Gnaizda) to set a 2003 rate for Gamboa of \$330 per hour.

Greenlining seeks an hourly rate of \$300 for work performed by its expert Gelly Borrromeo. Borrromeo is an advisor to financial institutions on their minority contract programs and to non-profit organizations involved in community economic and small business development. This is the first time we have set an hourly rate for Borrromeo for her work before the Commission.

According to Greenlining's supplement to its request for compensation, Borrromeo obtained a degree in Marketing and Public Relations in 1981 from De

La Salle University in Manila. Borromeo also completed the Minority Business Enterprise Program in 1999 and the Advanced Minority Business Enterprise Program in 2000 at the Tuck School of Business at Dartmouth College. In 1992, Borromeo and her husband launched Asian Business Ventures and started publishing Asian Entrepreneur Magazine, America's first magazine focused on Asian businesses. Borromeo is also a member of numerous professional and civic organizations. Greenlining states that Borromeo's experience is similar to that of Terry Murray, who was authorized a rate of \$300/hour for work done in 1998 and 1999 for The Utility Reform Network (TURN).

In evaluating the proper hourly rate, we look to the experience of a particular expert, relevant market rate data, and the rates awarded to peers practicing before the Commission. Here, Greenlining points us to only one other expert appearing before us and provides no other comparative market data to evaluate Borromeo's rate. We do not find Murray's experience comparable to Borromeo's because Murray, who has an M.A. in Economics, has had at least 20 years of experience in her field testifying before this Commission, either for Commission staff or as a consultant for other parties. Although Borromeo has 20 years of general work experience, her WMBE-focused experience begins about 1992, which gives her 12 years of experience in her field. Moreover, Borromeo has limited experience testifying before the Commission, having appeared recently in two other proceedings.

In addition, in seeking a rate for Murray of \$300/hour, TURN argued that demand for telecommunications experts was high following the passage of the Telecommunications Act of 1996, resulting in a higher market rate for those experts. We found this argument significant when we set Murray's rate at \$300/hour in D.01-08-010 for work performed in 1998 and 1999. Although

Greenlining argues that the demand for WMBE experts like Borromeo is high, Greenlining offers no support for this statement, such as the market rate for other WMBE experts.

Borromeo's credentials are more similar to Cynthia Mitchell, an economist who has consulted with TURN, and Jody London, a senior policy analyst for Grueneich Resource Advocates. Mitchell received an M.S. in Economics in 1981 and has nearly 30 years in of experience in energy policy, including nine years as chief economist for the Nevada Attorney General's Bureau of Consumer Protection. Mitchell also has been an expert witness in utility commission proceedings in 12 states and the District of Columbia. D.01-12-008, 2001 Cal. PUC LEXIS 1066 *9, awarded Mitchell \$115/hour for work performed in 2000-2001. London obtained her B.A. in English in 1985 and her M.A. in 1990. London has 13 years of experience in the energy industry, including six years on the Commission's own staff. London was awarded \$160/hour for her services in 2003. (See e.g. D.03-06-065, 1992 Cal. PUC LEXIS 1030*14-15 and D.04-05-010, 2004 Cal. PUC LEXIS 280 ** 11-12.)

Here, Greenlining states that Borromeo charges her own clients between \$1500 and \$3000 per day for up to eight hours a day, depending on whether her client is a for-profit or non-profit institution. Even if the requested rate is the consultant's standard rate, the key issue is whether the rate is reasonable compared to the market rates paid to persons of similar training and experience for similar services. We therefore find a 2003 rate of \$160/hour for Borromeo to be reasonable given Borromeo's training and experience and the comparable market data.

Greenlining seeks an hourly rate of \$265 for work performed by attorney Itzel Berrío in 2002. The Commission in A.03-10-062 approved this rate for work

performed by Berrío in 2002, and we find this rate reasonable. For her work in 2003, Greenlining seeks an hourly rate of \$290. Greenlining states that Berrío, who has practiced law since 1997, should be considered a junior partner. Berrío's training and experience compares favorably to that of Osa Armi, also a 1997 law school graduate, who represented Save Southwest Riverside County. In D.03-04-050 and D.04-02-026, we found that Armi and Berrío have comparable experience. In D.04-02-026, Armi was awarded a 2003 hourly rate of \$230 (an increase of less than 5% over her 2002 rate). Enrique Gallardo, another 1997 law school graduate, was awarded a 2003 rate of \$265 in D.04-03-030. For these reasons, the requested rate of \$290, an increase of 9.4% from the 2002 rate, is high compared to the rates awarded for similar services from comparably qualified persons. A rate of \$275 per hour for work performed in 2003 (a 3.8% increase) is reasonable in comparison to the market rates for similar services from comparably qualified persons.

Greenlining seeks an hourly rate of \$90 for work performed by paralegal Noelle Abastillas in this proceeding in 2003. The Commission has not previously approved a rate for Abastillas. Abastillas is a 2003 college graduate who worked in a paralegal capacity for Greenlining. In past decisions we awarded recent college graduates and novice paralegals a rate of \$75 per hour for work performed in 1999. Therefore, \$90 is a reasonable rate for this type of work in 2003.

Request for Other Hours

Greenlining requests that the Commission allow it to file for compensation for additional work it believes is required as a result of this proceeding. Specifically, Greenlining requests that the Commission allow it to file for compensation for the time spent preparing for and participating in the

workshops ordered by D.03-11-024, and in auditing the utilities new GO 156 reports due on March 2004. SBC opposes this portion of Greenlining's request.

D.03-11-024 closed this proceeding, and directed the Commission's Consumer Services and Information Division (CPIS)¹² to subsequently hold workshops to develop uniform reporting categories for all utilities to employ in their WMDVBE reports. The anticipated outcome of these workshops is a CPIS workshop report. In D.03-11-024, the Commission stated it anticipated opening another rulemaking to address proposed amendments to GO 156 regarding uniform reporting categories resulting from the workshop. Greenlining's request for authorization for reimbursement for its activities surrounding the workshop is therefore premature. However, Greenlining may request compensation for these activities in connection with any rulemaking (or other proceeding) issued as a result of the workshop, at such time as Greenlining is able to demonstrate substantial contribution to the later rulemaking.

We also deny Greenlining's request for costs for its anticipated audit of the utilities' 2003 WMDVBE reports. It is the Commission's task to monitor these audit reports. Moreover, Greenlining cannot demonstrate in advance of the activity in question whether its actions constitute a substantial contribution to a particular proceeding. We therefore deny this request as it is, at best, premature.

¹² At the time D.03-11-024 issued, CPIS was known as the Communications and Public Information Division.

Multiplier for Hourly Rates

Greenlining requests that we apply a 50% multiplier to most of these hourly rates.¹³ Greenlining believes its participation justifies a multiplier of as much as 100%. As support, Greenlining claims that (a) its overall fee request is modest compared to the various utilities' litigation expenses; (b) it had a high degree of success in this proceeding; (c) its fee request is based on below-market hourly rates; (d) its participation was contingent on success and can be valued at over \$2 billion over the next five years; and (e) its efforts were efficient. SBC and Verizon oppose this portion of Greenlining's request.

In practice, a multiplier award is rare; it represents an additional cost to ratepayers, which must itself be justified as fair and reasonable. As the Commission explained in a recent intervenor compensation decision, "our standards for applying hourly rate multipliers to attorney fees are necessarily high. If we did not set and maintain high standards, many attorney fees in compensation requests would include multipliers, and we would no longer be adopting attorney fees based on market rates for comparable training and experience as required by Section 1804." (D.02-09-003, 2002 Cal. PUC LEXIS 531, *18.) This policy, equally applicable to multipliers for expert witness fees, is not new but has been articulated in various ways in intervenor compensation decisions dating back to the mid-1980s.¹⁴

¹³ Greenlining does not request a multiplier for Abastillas.

¹⁴ D.98-04-059, which issued in our most recent intervenor compensation rulemaking, confirms this policy.

Commission decisions authorize two different kinds of multipliers, sometimes differentiated as either an “efficiency adder” or a “fee enhancement.” Both result in increased awards by multiplying the authorized hourly rate times the authorized adder or enhancement. An “efficiency adder” has been approved where a customer’s participation involved skills or duties far beyond those normally required. An example is when an attorney develops and sponsors necessary technical testimony, performing the dual roles of counsel and expert not only with a very high degree of professionalism but also at a lower total cost than the hourly fee of the two individuals. A “fee enhancement” has been approved where the Commission determined the intervenor had achieved exceptional results.

Returning to Greenlining’s arguments for a multiplier here, we find those arguments unpersuasive. While Greenlining’s work was efficient and its efforts resulted in the Commission initiating the rulemaking, we recognize these efforts in the hourly rate reflected in the compensation award. This proceeding was not unusually complex or contentious, and was resolved by the Commission through a notice and comment process. Thus, although Greenlining’s efforts were successful in significant part, the issue of whether or not to eliminate exclusions in GO 156’s reporting requirements is not of such novelty or complexity as to justify application of a multiplier. We therefore decline to apply a multiplier to this award.

Other Costs

Greenlining seeks reimbursement for \$359.44 for postage costs. Given the many parties on the service list, these costs are reasonable.

Award

As set forth in the table below, we award Greenlining \$31,450.44.

Attorney/Expert	Year	Rate	Hours	Fees Awarded
Robert Gnaizda	2003	\$450	21.7	\$9765.00
John C. Gamboa	2003	\$330	2.0	660.00
Gelly Borromeo	2003	\$160	10.0	1,600.00
Itzel Berrío	2002	\$265	12.7	3,365.50
Itzel Berrío	2003	\$275	56.6	15,565.50
Noelle Abastillas	2003	\$ 90	1.50	135.00
Total Fees				31,091.00
Postage				359.44
Total Fees and Costs Awarded				\$ 31,450.44

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing the 75th day after Greenlining filed its compensation request and continuing until full payment of the award is made.

This rulemaking proceeding affected a broad array of utilities in energy and telecommunications. As such, we will authorize payment of the compensation award from the intervenor compensation program fund, as described in D.00-01-020.

We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Greenlining's records must identify specific issues for which it

requested compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

Comments on Draft Decision

Pursuant to Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment could be waived. However, we are allowing review and comment on the draft decision in light of the novelty and controversy regarding some of the issues raised by Greenlining's request.

Assignment of Proceeding

President Michael R. Peevey is the Assigned Commissioner and Janet A. Econome is the assigned ALJ in this proceeding.

Findings of Fact

1. Solely for this proceeding, Greenlining's petition filed pursuant to § 1708.5 serves in substance as its NOI with respect to P.02-10-035 and R.03-02-035. This finding is limited to this proceeding only and is not precedent for future intervenors filing a §1708.5 petition.
2. Greenlining made a substantial contribution to P.02-10-035 and D.03-11-024.
3. Greenlining's hourly rates for attorneys and experts as awarded in today's decision are reasonable when compared to the market rates for persons with similar training and experience.
4. Greenlining's requested costs are reasonable.
5. The total of these reasonable fees (derived from the awarded hourly rates) and costs is \$31,450.44.

6. Greenlining's request for an advance authorization for reimbursement for its activities surrounding the workshop ordered by D.03-11-024 is premature.

7. Greenlining's request for costs for its anticipated audit of the utilities' 2003 WMDVBE reports is premature.

8. Greenlining fails to demonstrate factors adequately justifying its requested 50% multiplier.

Conclusion of Law

1. To the extent provided in the foregoing opinion and findings of fact, Greenlining has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed fees and expenses incurred in making substantial contributions to P.02-10-035 and D.03-11-024.

2. This decision should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The Greenlining Institute (Greenlining) is awarded \$31,450.44 as compensation for its substantial contributions to Petition 02-10-035 and Decision (D.) 03-11-024 in this rulemaking.

2. Within 30 days of the effective date of this decision, Greenlining's award shall be paid from the intervenor compensation program fund, as described in D.00-01-020. Payments of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning with March 19, 2004, the 75th day after the filing date of Greenlining's request for compensation, and continuing until full payment is made.

3. This proceeding is closed.

This order is effective today.

Dated _____, 2004, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision:	
Contribution Decision(s):	P0210035; D0311024
Proceeding(s):	P0210035; R0302035
Author:	ALJ Econome
Payer(s):	Commission

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Greenlining Institute	January 9, 2004	\$57,339.19	\$ 31,450.44	No	Hours claimed for work performed outside of proceeding; failure to justify hourly rate; failure to justify multiplier; failure to discount travel time.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Robert	Gnaizda	Attorney	Greenlining Institute	\$450	2003	\$450
Itzel	Berrío	Attorney	Greenlining Institute	\$265	2002	\$265
Itzel	Berrío	Attorney	Greenlining Institute	\$290	2003	\$275
John	Gamboa	Policy Expert	Greenlining Institute	\$350	2003	\$330
Nelly	Borromeo	Policy Expert	Greenlining Institute	\$300	2003	\$160
Noelle	Abastillas	Para-legal	Greenlining Institute	\$90	2003	\$ 90